IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE NINETEENTH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT PETITION NO : 776 of 1998

Between:

B.Narayana Rao, S/o. Gopala Rao,
R/o.Village & Post- Kasuru, Movva Mandal, Krishna Dist.

..... PETITIONER

AND

1 Union of India, Rep by its Secretary
Ministry of Defence, New Delhi.
2 The Dy.Collector of Defence, Accounts
Air Force, New Delhi-110010.
3 Air Force Record Office
Subroto Park, New delhi-110010.
4 The Branch Manager
Indian Bank , Kosuru Branch Krishna Dist.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to may be pleased to issue a writ, order or direction particularly in the nature of writ of Mandamus declaring the action of the respondents in reducing the 60% disability pension from Rs.270/- to 180/- PM is arbitrary, malafide, illegal and consequently direct the respondents to continue to pay 60% disability to the petitioner and pass such other order or orders.

Counsel for the Petitioner: MR.C.M.R.VELU

Counsel for the Respondent Nos.1to3: MR.M. Ratna Reddy

Counsel for the Respondent No.4: None appeared

The Court made the following ORDER:

ORDER:

The only grievance of the petitioner in this writ petition is that after serving the Indian Air Force, he was discharged from service and apart from the regular pension, he was also paid Rs.270/- per month towards disability pension. By impugned order dated 08.09.1997, the same is sought to be reduced to Rs.180/- per month, which is arbitrary and illegal.

The petitioner, while serving Indian Air Force, was discharged from service on 01.06.1994 and he is being paid the regular pension as per the eligibility. However, while the petitioner is in service he incurred medical disability, which was attributable to the nature of job attended to by him. Therefore, along with the pension he was also granted Rs.270/- per month as disability pension. The disability pension was liable to be reviewed from time to time. The Medical Board at Hyderabad reviewed the case of the petitioner and recommended for 60% of the disability for which the petitioner is entitled to get pension of Rs.270/- as was fixed earlier. By the impugned order dated 08.09.1997, the reviewing Authority at Allahabad, after reviewing the records and the recommendation of the Medical Board at Secunderabad came to the conclusion that the petitioner is suffering only 40% of the disability and not 60% and reduced, the disability pension from Rs.270/- to Rs.180/- per month. Aggrieved by the same, the present writ petition is filed.

A detailed counter-affidavit has been filed stating that on 27.08.1993, the Air Headquarters, RMB recommended only 15-19% disability. With this disability, the petitioner was not entitled for disability pension, but MA(P) Allahabad increased and accepted the disability of 60% and accordingly he was getting disability pension. After this, the RSMB was conducted on 12.10.1996 at MH Secunderabad. RSMB also recommended 60% disability. However, the disability was accepted by MA(P) Allahabad at 40% and accordingly disability pension was reduced from Rs.270/- to Rs.180/- per month.

The competency of the Medical Authority for reviewing and reducing the medical pension is not in challenge. The only contention of the learned counsel for the petitioner is that before passing the said order, no notice was given to the petitioner reducing his disability pension from 60% to 40%, which resulted in civil consequences.

The learned counsel for the respondents, Sri M. Ratna Reddy, has drawn

attention of the Court to the amended provision of Rule 17 of the Entitlement Rules, 1982 (for short 'the Rules') which was amended with effect from 22.11.1983 wherein there is a provision for Appeal under the Medical Disability Scheme once the reviewing committee has reduced the pension.

Admittedly, the petitioner has not availed the remedy of filing of an appeal before the competent authority. In fact further second appeal is also provided under the Rules. In so far as the contention of the learned counsel for the petitioner that before reducing the pension of the petitioner, the reviewing authority ought to have put him on notice, cannot be accepted for the reason that nature of review itself is on the basis of the records placed before it. The reviewing authority, as per the Rules, examined the records placed before it by the Medical Board of Secunderabad, which recommended 60%. The very nature of review is for the purpose to oversee correctness of the recommendation of the Medical Board at Secunderabad. Therefore, on the basis of the record, the reviewing authority has taken a decision reducing the disability from 60% to 40%. If the petitioner wants to assail the same, the only remedy for him was to file an appeal before the competent authority, which he has not done so; therefore, this Court cannot sit over the impugned proceedings in appeal and decide the matter, which is not permissible in law. However, while admitting the writ petition, this Court, stayed the impugned proceedings and in view of the same, the petitioner is getting the disability pension at Rs.270/-.

Under the above circumstances, the petitioner is directed to file a regular appeal before the competent authority within a period of one month from today. On filing of such appeal, the competent authority shall entertain the same without raising any objection as to limitation etc., and dispose of the same on merits. Till the disposal of the appeal, the impugned order shall not be given effect to.

The writ petition is accordingly disposed of. No order as to costs.

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C.V.Ramulu, J

19th November, 2004

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To

1 The Secretary, Union of India,
Ministry of Defence, New Delhi.
2 The Deputy Collector of Defence, Accounts
Air Force, New Delhi-110010.
3 Air Force Record Office
Subroto Park, New delhi-110010.
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